that a common carrier cannot limit his liability so as to cover his own or his servants' negligence. Nor do I suppose this possible of any bailee. But it is clear that by contract he may be placed in the position of a limited insurer, excepting negligence, instead of an insurer against everything but the act of God or public enemies. If he be compensated only for the former risk instead of the latter, at the choice of the consignor, it would be contrary to common honesty to compel him to make good a risk he is not paid for assuming. We think this case was well decided at Nisi Prius, and the

Judgment is affirmed.

WOODWARD, C. J., dissented as to the *onus probandi*.

THE CONSTITUTIONALITY OF THE EXEMPTION CLAUSE OF THE BANKRUPT ACT.

[An article having appeared in a previous number of this Journal (October 1867), on the constitutionality of the concluding exemption clause in the Bankrupt Act, we give, by request of the framer of the bill, the remarks of Senator POLAND in the course of the earnest and very able debate on this portion of the act in the Senate. See Congressional Globe, February 2d 1867, page 962, &c.—EDS. AM. LAW REG.]

Mr. POLAND.—Mr. President: I confess that were it not for the very confident manner in which members of the Senate, whose opinions are entitled to very great respect, especially upon legal subjects, have declared their opinion that this adoption of the Homestead Exemption Laws of the different states renders this law open to the objection that it is not uniform, I should have felt that the objection was entirely frivolous.

I think, if it were in our power, if it were possible for us to adopt the systems of the different states in relation to the exemptions in favor of poor debtors, every member of the Senate would say that as a matter of discretion, as a matter of judgment, as a matter of prudence, as a matter of safe and proper legislation, it was better to leave that subject to be regulated by the state legislatures, who know the circumstances, the wants, the condition of all their inhabitants, rich and poor, better than we can. All would agree that it had better be left to them to say what mercy

should be shown to the poor debtor, how the balance should be struck between the creditor and the debtor in their respective localities, than we can determine here in this Senate Chamber.

This is not the objection; it is that under the Constitution we have not the power; that if we leave any exemptions at all in favor of the debtors who either voluntarily go into this system for the purpose of becoming relieved of their debts, or are driven into it by their creditors, if anything is to be left to them that does not go into their assets for division among their creditors, if anything is to be doled out to them or retained to them out of their property, it must be by some uniform rule that must be written down in the law itself.

Mr. President, it seems to me that this is not necessary in order to make this a uniform system of bankruptcy. All the states have exemption laws, and they are different in their terms. Some exempt a greater amount of real estate than others; a greater amount of personal property is exempted in some states than in others; but all the states have laws on the subject. They have regulated it according to their own judgment. They say that a debtor may, for his own subsistence and for his family, retain a certain amount of property that shall not be liable to be taken by any legal process for payment of his debts. No question is raised here, none ever has been raised, but that those state laws are entirely constitutional. It has been decided over and over again that the states may make additional exemptions of property as against debts that were already in existence at the time. So no question arises but that the state laws, providing that certain property may be retained by debtors against their creditors, are valid and constitutional and binding.

Now, what does this bill propose to do, as the House passed it? We propose simply to get up a law and adapt legal machinery to it, by which all the property of every bankrupt throughout the United States that is liable for the payment of his debts may be taken and administered and distributed equally among the creditors. This is all this amounts to. If there were no exemptions by state laws and we were to make an exemption; if by existing laws all the property of every debtor throughout the country was liable for the payment of his debts and we were to undertake to establish a system of administration throughout the entire country, I should agree, I think, that we must make an

exemption that should be uniform in all the states; but that is not what we attempt to do. By this bill we lay hold of, we seize all the property of every bankrupt that is liable for the payment of his debts by law, against which the creditors have any right to proceed by any process in the state courts, or in the United States courts; and we say that all that property shall be taken and be distributed in a particular way equally among all the creditors.

Is not that uniform? In order to comply with this requirement of the Constitution, to have the system of bankruptcy uniform, is it necessary that it must operate in every state precisely alike? Are there not a great variety of contracts that are binding and legal and valid and hold a man's property in one state that would be entirely invalid and inoperative to hold his property in another state?

But it may be said that this proves nothing, because a contract valid by the laws of the state where made must be valid everywhere. But under the Bankrupt Law of 1841 the question arose in relation to statute liens. I mentioned the other day the controversy that arose in New England, beginning between Judge STORY and Judge PARKER, who was then Chief Justice of New Hampshire, in relation to our New England attachment liens; I believe they are not known, out of New England, in any part of the United States as an ordinary process. With us in New England, when a man brings an action for the collection of a debt, if he can find property of the debtor, he sends out the sheriff and seizes it upon the writ in advance of any judgment, without filing any affidavit that the party is going to abscond or has property concealed. It is a matter of right with him. The Bankrupt Law of 1841 provided that liens upon property should be saved from the operation of the Bankrupt Law. The question arose whether these statute liens in New England came within the meaning of the Bankrupt Law, and it was eventually settled that they did; they were sustained.

It was utterly impossible that any such lien could exist in any state out of New England under any state law; there were no such liens on property elsewhere. If the Bankrupt Law of 1841 protected those liens upon property in New England, it established a rule for New England that was different from that established in any other state, and saved a kind of claims upon pro

perty which in any other state could not exist; and these were not like contracts that were entered into in one state which would be good everywhere, because these could have no force or effect out of the state, could not be enforced in any other place. And yet the Supreme Court of the United States held that the recognition of the state liens by that bankrupt law did not render it liable to the objection of want of uniformity in the constitutional sense. (See *Peck* v. *Jenness*, 7 Howard 612.—Ed. Am. Law Reg.)

I do not desire to enter into any extended discussion. Enough has been said by other senators in relation to this question, so it is understood in all its bearings; and it seems to me that it is entirely clear that the adoption of these different homestead exemptions of the different states does not prevent the law from being uniform in a legal sense. I might say that when the bankrupt law of 1841 was under discussion in Congress, an amendment was adopted in the House by a very considerable majority, embodying the very provision that is contained in this bill, and that amendment was moved by a member of Congress who is now one of the judges of the Supreme Court of the United States. Eventually that amendment was struck out by a small majority, but it was at one time adopted, and adopted upon the motion of a gentleman who is now one of the judges of the Supreme Court of the United States.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF MAINE.[1]

SUPREME COURT OF MASSACHUSETTS.[2]

SUPREME COURT OF MICHIGAN.[3]

SUPREME COURT OF NEW YORK.[4]

SUPREME COURT OF VERMONT.[5]

Account Stated.

The plaintiff claimed to have left a draft with a bank, for collection,

[1] From W. W. Virgin, Esq., Reporter; to appear in 54 Me. Rep.

[2] From Hon. Charles Allen, Reporter; to appear in Vol. 13 of his Reports.

[3] From Hon. T. M. Cooley; to appear in 16 Mich. Rep.

[4] From Hon. O. L. Barbour; to appear in Vol. 48 of his Reports.

[5] From W. G. Veazey, Esq., Reporter; to appear in 39 Vt. Reports.